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November 15, 2023

VIA ECF

The Honorable Edgardo Ramos
United States District Court (S.D.N.Y.)
Thurgood Marshall Courthouse
40 Foley Square
New York, NY 10007

Re: *Esperion Therapeutics, Inc. v. Daiichi Sankyo Europe GmbH,*
Civil Action No. 1:23-cv-02568 (S.D.N.Y.)

Dear Judge Ramos:

We represent Daiichi Sankyo Europe GmbH (“DSE”) in the above-captioned matter. We write pursuant to this Court’s Individual Practice Rule 3(ii) to respectfully request permission to file under seal two exhibits (the “Exhibits”) to the Declaration of Toni-Ann Citera in Support of Defendant’s Opposition to Plaintiff’s Motion for Judgment on the Pleadings (“Citera Declaration”). In support, DSE states:

1. On September 8, 2023, this Court entered the Stipulated Protective Order (the “Protective Order”). ECF No. 57.
2. The Protective Order applies to “any information of any kind and in any form provided in the course of discovery in this Action” and allows the parties to designate such documents as confidential or highly confidential. ECF No. 57 ¶ 1.
3. The Protective Order requires that “any Party seeking to file any document containing Confidential or Highly Confidential – Attorneys’ Eyes Only Discovery Material under seal shall (a) electronically file under seal via the Court’s Electronic Case Filing system a copy of the unredacted document with the proposed redactions highlighted; (b) publicly file via the Court’s Electronic Case Filing system the document with only the Confidential or Highly Confidential – Attorneys’ Eyes Only Discovery Material redacted; and (c) file a motion explaining the need to withhold the Confidential or Highly Confidential – Attorneys’ Eyes Only Discovery Material at issue from the public record.” ECF No. 57 ¶ 12.
4. Additionally, the License Agreement between the parties contains strict confidentiality provisions requiring, *inter alia*, that all confidential or proprietary information

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disclosed under the License Agreement “be maintained in confidence” and not disclosed. *See* ECF No. 20-1 § 7.1.

5. The Exhibits contain information designated as “Confidential” pursuant to the Protective Order entered by the Court. The Exhibits contain non-public information regarding the protocol for the CLEAR Outcome Study, also known as “A Randomized, Double-blind, Placebo-controlled Study to Assess the Effects of Bempedoic Acid (ETC-1002) on the Occurrence of Major Cardiovascular Events in Patients with, or at high risk for, Cardiovascular Disease who are Statin Intolerant.”

Based on the foregoing, DSE respectfully requests that the Court allow its Exhibits to the Citera Declaration to be filed under seal in order to protect confidential information from public dissemination pursuant to the parties’ protective order and this Court’s Individual Practice Rule 3(ii).

Respectfully Submitted,

/s/ Jeremy P. Cole

Jeremy P. Cole
Counsel for Daiichi Sankyo Europe GmbH

cc: All Counsel of Record (via ECF)